

COUNCIL ACTION FORM

SUBJECT: AMENDED AGREEMENT WITH AMES COMMUNITY SCHOOL DISTRICT TO PROVIDE PLAYGROUND EQUIPMENT & MAKE ELEMENTARY SCHOOL SITES AVAILABLE TO THE GENERAL PUBLIC FOR USE AS NEIGHBORHOOD PARKS

BACKGROUND:

During 2010 City staff became aware that the Ames Community School District had a need to replace play equipment at each of its six elementary schools. At the time, the District was facing difficult financial challenges and could not fund the total cost to replace this equipment.

In the spirit of cooperation, in September 2011 the City and the School District entered into an intergovernmental agreement to partially fund the purchase of new equipment at six elementary schools. The rationale for this City/School District partnership was as follows:

1. An upgrade to district facilities would facilitate the City Council's goal to strengthen our neighborhoods.
2. Each elementary school will have a safe, fun, and age appropriate play structure.
3. After school hours, elementary schools will be utilized by the general public as a "neighborhood park".

The estimated cost for each piece is approximately \$37,500. To accomplish this goal, the City would contribute up to \$135,000 (60%) of the total costs and the District would contribute \$90,000 (40%) by September 30, 2014.

To date, equipment has been purchased and installed at Old Edwards, Fellows, Northwood, and Sawyer Schools. New Edwards is planned for 2014, while Meeker and Mitchell are slated for 2015. Thus far, the City has reimbursed the District \$90,000 for the four sites.

Several changes are now being proposed to the intergovernmental agreement. The main changes are as follows:

1. The purpose has been modified to include making elementary school sites available to the general public to be used as neighborhood parks when school is not in session.

2. The term of the original document expires September 30, 2014. The City and the District felt the agreement should remain in effect until such time as both parties mutually agree to terminate the agreement under Section 8 of the amended agreement.
3. A seventh elementary school site, New Edwards, has been included in this agreement. Funding to include this site was included in the FY 2014/15 Capital Improvements Plan and was approved by City Council.
4. All funding pursuant to this agreement shall be spent by June 30, 2016.

ALTERNATIVES:

1. Approve the attached amended agreement with the Ames Community School District for the purpose of making elementary school sites available to the general public to be used as neighborhood parks when school is not in session, as well as to fund play equipment for a seventh site (New Edwards) at a cost up to \$22,500.
2. Refer this topic back to staff.
3. Do not approve the attached amended 28E agreement with the Ames Community School District.

MANAGER'S RECOMMENDED ACTION:

The current agreement has accomplished the vision of this partnership as noted above. The proposed changes relating to the purpose and term confirm that the elementary school sites can be promoted as "neighborhood parks" beyond the purchasing of the equipment. Funding a seventh site makes sense, since the residents in the New Edwards area will benefit from a neighborhood park.

Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1 as described above.

AMENDED CHAPTER 28E
CITY OF AMES AND AMES COMMUNITY SCHOOL DISTRICT

THIS AMENDED AGREEMENT is made and entered into this ____ day of _____, 2014 by and between the City of Ames, Iowa (hereafter "City"), and the Ames Community School District (hereafter "School District"). The parties agree as follows:

SECTION 1. PURPOSE.

The parties have entered into this Agreement for the purpose of making available Elementary School sites to the general public to be used as neighborhood parks when school is not in session.

SECTION 2. TERM.

The term of the Amended Agreement shall commence on ____ day of _____, 2014 and remain in effect until such time that the parties mutually agree to terminate the agreement under Section 8 of this agreement.

SECTION 3. FILING.

Pursuant to Iowa Code § 28E.8, the City Clerk shall file the Agreement with the Iowa Secretary of State.

SECTION 4. RESPONSIBILITIES OF THE PARTIES.

4.1 Responsibilities of the City

The City agrees to provide partial funding for the purpose of purchasing commercial grade playground equipment for up to seven elementary school sites, including Edwards, Fellows, Meeker, Mitchell, New Edwards, Northwood , and Sawyer elementary schools.

4.2 Responsibilities of the School District

The School District agrees to be responsible for selecting, purchasing, installing, and maintaining the playground equipment. The playground equipment shall become the asset of the School District. The School District will assume all responsibilities in maintaining, operating, and replacing the equipment. The School District will assume any and all liability related to its existence. This liability will continue until the equipment is removed from the site.

The School District agrees to make the seven elementary schools sites available to the general public to be used as a neighborhood park.

SECTION 5. COST.

The City will fund up to \$22,500 per elementary school site for a total amount not to exceed \$157,500. The School District will fund up to \$15,000 per school site. If less funding is required per site, the same funding formula will be used with the City paying sixty percent (60%) and the School District paying forty percent (40%). The City's contribution is for the purchase of playground equipment only; not for safety surfacing, footings, installation, or other ancillary expenses.

The School District must submit documentation including specific site location, equipment manufacturer, and a copy of the paid invoice from the supplier which includes itemized costs before the City will provide its share of the funding.

All funding spent pursuant to this Agreement shall be spent by June 30, 2016.

SECTION 6. ADMINISTRATION OF THE AGREEMENT.

The City and the School District shall jointly administer the agreement.

SECTION 7. NO SEPARATE ADMINISTRATIVE ENTITY.

No new or separate legal or administrative entity is created by this Agreement.

SECTION 8. TERMINATION.

8.1 Termination of City's Contribution

Following thirty (30) days written notice, either party may terminate the portion of this Agreement related to the City's contribution of funds, in whole or in part, for convenience without the payment of any penalty or incurring any further obligation to the non-terminating party. Following termination for convenience, the non-terminating party shall be entitled to compensation, upon the submission of invoices and proper proof of claim, for equipment purchased under the Agreement to the terminating party up to and including the date of termination.

8.2 School Sites to Remain as Neighborhood Parks

The aforementioned elementary school Sites shall remain open to the general public to be used as neighborhood parks until such time that the parties mutually agree to terminate the purpose of the agreement.

SECTION 9. INDEMNIFICATION.

The School District does hereby covenant and agree to indemnify and hold harmless the City, its officers and employees, against any loss or liability whatsoever, including reasonable attorney's fees, pertaining to any and all claims by any and all persons, resulting from or

arising out of the School District's construction, location, operation and maintenance of said playground equipment. This liability will continue beyond the term of this agreement and for the lifetime of the equipment.

SECTION 10. CONTACT PERSON.

At the time of execution of the Agreement, each party shall designate, in writing, a Contact Person to serve until the expiration of the Agreement or the designation of a substitute Contact Person. During the term of the Agreement, each Contact Person shall be available to meet, as otherwise mutually agreed, to plan the services being provided under the Agreement.

SECTION 11. CONTRACT ADMINISTRATION.

11.1 Amendments

The Agreement may be amended in writing from time to time by mutual consent of the parties. All amendments to the Agreement must be fully executed by the parties.

11.2 Third Party Beneficiaries

There are no third party beneficiaries to the Agreement. The Agreement is intended only to benefit the City and the School District.

11.3 Choice of Law and Forum

The terms and provisions of the Agreement shall be construed in accordance with the laws of the State of Iowa. Any and all litigation or actions commenced in connection with the Agreement shall be brought in Story County District Court.

11.4 Assignment and Delegation

The Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party.

11.5 Integration

The Agreement represents the entire Agreement between the parties and neither party is relying on any representation that may have been made which is not included in the Agreement.

11.6 Not a Joint Venture

Nothing in the Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, association of any kind or agent and principal relationship between the parties. Each party shall be deemed an independent contractor acting toward the expected mutual benefits. No party, unless otherwise specifically provided for herein, has the authority

to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon the other party to the Agreement.

SECTION 12. EXECUTION.

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the Agreement and have caused their duly authorized representatives to execute the Agreement.

BY CITY OF AMES

By: _____
Mayor Date

Attest: _____
City Clerk Date

BY AMES COMMUNITY SCHOOL DISTRICT

Date

Date